

## **SECTION 6**

### **DES/DDD STANDARD TERMS AND CONDITIONS**

#### **6.1 Definition of Terms**

As used in this Request for Qualified Vendor Applications (RFQVA) and any resulting agreement, the terms listed below are defined as follows:

- 6.1.1 “Agency” means an organization that has a Federal Employer Identification Number (FEIN) and employs one or more direct service staff other than the owner.
- 6.1.2 “Agreement” means the Qualified Vendor Agreement which is a legally binding contract to provide community developmental disability services and includes the following: the Request for Qualified Vendor Applications, including service requirements/scope of work, terms and conditions, and services specifications; the published or negotiated rates and any updates; the Application and any updates; the Qualified Vendor Agreement Award Notice; any amendments to the RFQVA; any Agreement Amendments; and any terms applied by law.
- 6.1.3 “Agreement Amendment” means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the agreement.
- 6.1.4 “Agreement Services” means the services to be delivered by the Qualified Vendor under this agreement.
- 6.1.5 “AHCCCS” means the Arizona Health Care Cost Containment System as established by Arizona Revised Statutes (A.R.S.) 36-2901 et seq., and defined by Arizona Administrative Code (A.A.C.) R9-22-101.B.1.
- 6.1.6 “AHCCCSA” or “Administration” means the Arizona Health Care Cost Containment System Administration as defined by A.R.S. 36-2901.1.
- 6.1.7 “ALTCS” means the Arizona Long Term Care System as defined by A.A.C. R9-28-101.B.2.
- 6.1.8 “Applicant” means a vendor who submits an application in response to the Request for Qualified Vendor Applications.
- 6.1.9 “Application” means a completed copy of the Application and Qualified Vendor Agreement Award form submitted in hard copy to the Division; the required information in the Qualified Vendor Application and Directory System submitted electronically to the Division via the Division’s website, and approved by the Division; a hard copy of the required information entered into the Qualified Vendor Application and Directory System submitted to and approved by the Division; and all applicable submittals required in the Qualified Vendor Application Assurances and Submittals form submitted to and approved by the Division.
- 6.1.10 “Business Day” means any day that the Division is open to conduct business.
- 6.1.11 “Clean Claim” means claims that may be processed without obtaining additional information from the provider of service or from a third party but does not include claims under investigation for fraud and abuse or claims under review for medical necessity (A.R.S. 36-2904.H.1).
- 6.1.12 “Client,” “Member,” “DD/ALTCS Member,” “Consumer,” or “Individual” means a person who is authorized to receive services through the Division.

- 6.1.13 “Community Developmental Disability Services” means any service or support the Division is authorized to purchase on behalf of individuals with developmental disabilities and their families or guardians.
- 6.1.14 “Day” means calendar day unless otherwise specified.
- 6.1.15 “Department” means the Arizona Department of Economic Security (DES), unless otherwise indicated.
- 6.1.16 “Division” or “DDD” means the Division of Developmental Disabilities within the Department of Economic Security.
- 6.1.17 “Effective Date” means the date that the Procurement Officer signs the Qualified Vendor Agreement Award, unless another date is specifically stated in the agreement.
- 6.1.18 “Encounter” means the record of a service submitted to or by the Division and processed by AHCCCS that is rendered by a provider registered with AHCCCS to a member who is enrolled with the Division on the date of service for which the Division incurs a financial liability (A.A.C. R9-22-107.13).
- 6.1.19 “Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 6.1.20 “Independent Provider” means a person who does not have any employees other than himself/herself and provides Attendant Care; Habilitation, Support; Housekeeping; Respite; Day Treatment and Training, Adult; Day Treatment and Training, Children (After-School); Day Treatment and Training, Children (Summer); Habilitation, Individually Designed Living Arrangement; or Transportation (Family and Friend).
- 6.1.21 “Individual Support Plan” or “ISP” means a written statement of services to be provided to an individual with developmental disabilities including habilitation goals and objectives and a listing of the services, if any, the consumer is authorized to receive. The ISP incorporates and replaces the Individual Program Plan, the placement evaluation, the individualized service program plan and the service program plan used in A.R.S. § 36-557. ISP incorporates the Individual Family Service Plan (IFSP) as defined in Section 809.1 of the Division’s Policy and Procedures Manual as well as a Person Centered Plan (PCP), which describes the type, frequency, and duration of the services and supports needed to achieve the appropriate outcomes for a consumer.
- 6.1.22 “Individual Support Plan Team” or “ISP Team” means a group of persons including the consumer, the consumer’s representative, and other persons selected by the consumer, assembled by the Division and coordinated by the consumer’s support coordinator in compliance with A.R.S. § 36-551 and 36-560 to develop the consumer’s individual support plan.
- 6.1.23 “May” indicates something that is not mandatory but permissible.
- 6.1.24 “Procurement Officer” or “Department Procurement Officer” or “Procurement Specialist” means the person duly authorized to enter into and administer agreements and make written determinations with respect to the agreement or their designee.
- 6.1.25 “Qualified Vendor” means any person or entity that has an agreement with the Division of Developmental Disabilities.
- 6.1.26 “Shall” or “Must” indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of an Application or termination of the agreement in whole or in part.

- 6.1.27 “Should” indicates something that is recommended but not mandatory. If the Applicant fails to provide recommended information, the State may, at its sole option, ask the Applicant to provide the information or evaluate the Application without the information.
- 6.1.28 “Subcontract” means any arrangement, expressed or implied, between the Qualified Vendor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of this agreement.
- 6.1.29 “State” means the State of Arizona and the Department or Agency of the State that executes the agreement.
- 6.1.30 “Third Party Liability” means the resources available from a person or entity that is or may be, by agreement, circumstances, or otherwise, liable to pay all or part of the medical expenses incurred by a Division client (A.A.C. R6-6-101.70 and A.A.C. Title 9, Chapter 22, Article 10).
- 6.1.31 “Third Party Payor” means any individual, entity or program that is or may be liable to pay all or part of the medical cost of injury, disease or disability of a Division client (A.A.C. R6-6-101.71).

## **6.2 Agreement Interpretation**

### **6.2.1 Arizona Law.**

The law of Arizona applies to this agreement including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and A.R.S. 36-557(B) and its implementing rules.

### **6.2.2 Implied Agreement Terms.**

Each provision of law and any terms required by law to be in this agreement are a part of this agreement as if fully stated in it.

### **6.2.3 Agreement Order of Precedence.**

In the event of a conflict in the provisions of the agreement, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 6.2.3.1 Qualified Vendor Award;
- 6.2.3.2 DES/DDD Standard Terms and Conditions;
- 6.2.3.3 Service Requirements/Scope of Work and Service Specifications;
- 6.2.3.4 Rates;
- 6.2.3.5 Information entered into the Qualified Vendor Application and Directory System (most recently approved); and
- 6.2.3.6 Attachments to information entered into the Qualified Vendor Application and Directory System (most recently approved).

- 6.2.4 Relationship of Parties.  
The Qualified Vendor under this agreement is an independent Qualified Vendor. Neither party to this agreement shall be deemed to be the employee or agent of the other party to the agreement.
- 6.2.5 Severability.  
The provisions of this agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the agreement.
- 6.2.6 No Parol Evidence.  
This agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- 6.2.7 No Waiver.  
Either party's failure to insist on strict performance of any term or condition of the agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 6.2.8 Headings.  
The section headings used in the agreement are for reference and convenience only and shall not enter into any interpretation of the agreement.

### **6.3 Agreement Administration and Operation**

- 6.3.1 Records.
- 6.3.1.1 Under A.R.S. § 35-214 and A.R.S. § 35-215, the Qualified Vendor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the agreement for a period of five years after the completion of the agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Qualified Vendor shall produce a legible copy of any or all such records.
- 6.3.1.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this agreement, or costs and expenses of this agreement as to which exception has been taken by the State, shall be retained by the Qualified Vendor until such grievances, disputes, litigation, claims or exceptions have been resolved.
- 6.3.1.3 The Qualified Vendor shall provide all reports requested by the Department, the Division and/or the AHCCCS and all information from its records relating to the performance of this agreement that the Department, the Division and/or the AHCCCS may reasonably require. The Qualified Vendor reporting requirements hereunder may include, but are not limited to, timely and detailed utilization statistics, information and reports.
- 6.3.1.4 The Qualified Vendor shall follow all policies and procedures of the Division for the acceptance, retention, disposition, and accounting for client funds. The Qualified Vendor also shall develop and maintain internal policies and procedures for the administration of such funds.

- 6.3.1.5 The Division is responsible for submission of accurate encounters to AHCCCSA for all agreement services rendered to eligible members by the Qualified Vendor and any subcontractor. Claims filed by the Qualified Vendor are the basis of the encounter submission by the Division.
- 6.3.1.6 Agreement service records will be maintained in accordance with this agreement. Records shall, as applicable, meet the following standards:
  - 6.3.1.6.1 Adequately identify the service provided;
  - 6.3.1.6.2 Include personnel records, which contain applications for employment, job titles and descriptions, hire and termination dates, a copy of the fingerprint clearance card, wage rates, and effective dates of personnel actions affecting any of these items;
  - 6.3.1.6.3 Include time and attendance records for individual employees to support all salaries and wages paid and claims for payment from the Division;
  - 6.3.1.6.4 Include records of the source of all receipts and the deposit of all funds received by the Qualified Vendor;
  - 6.3.1.6.5 Include original copies of invoices, statements, sales tickets, billings for services, deposit slips, etc., and a cash disbursement journal and cancelled checks to reflect all disbursements applicable to the agreement;
  - 6.3.1.6.6 Include a complete general ledger with accounts for the collection of all costs and/or fees applicable to the agreement; and
  - 6.3.1.6.7 Include copies of lease/rental contracts, mortgages and/or any other contracts, which in any way may affect agreement expenditures.
- 6.3.2 Non-Discrimination.

The Qualified Vendor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act and including:

  - 6.3.2.1 Unless exempt under Federal law, the Qualified Vendor shall comply with Title VII of the Civil Rights Act of 1964 as amended. The Qualified Vendor shall comply with the Age Discrimination in Employment Act. The Qualified Vendor shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The Qualified Vendor shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended.
  - 6.3.2.2 If Qualified Vendor is an Indian Tribal Government, Qualified Vendor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for an Indian Tribal Qualified Vendor to engage in Indian preference in hiring.
  - 6.3.2.3 The Qualified Vendor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of, or participation in, services on the basis of race, color, or national origin. The Qualified Vendor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in delivering services; and with Title II of the Americans with Disabilities Act, and the Arizona Disability Act, which prohibit discrimination on the basis of physical or mental disabilities in the provision of programs, services and activities.

- 6.3.2.4 The following which shall be included in all publications, forms, flyers, etc. that are distributed to consumers:  
“Under the Americans with Disabilities Act, the *(insert Qualified Vendor name here)* must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the *(insert Qualified Vendor name here)* must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the *(insert Qualified Vendor name here)* will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. Please contact: *(insert Qualified Vendor contact person and phone number here)*”
- 6.3.3 Audit.
- 6.3.3.1 Pursuant to ARS § 35-214, at any time during the term of this agreement and five years thereafter, the Qualified Vendor’s and/or any subcontractor’s books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the agreement or subcontract.
- 6.3.3.2 All Qualified Vendors are subject to the programmatic and fiscal monitoring requirements of each Department program to insure accountability of the delivery of all goods and services, as required under the Federal Single Audit Act. A minimum fiscal requirement for all Qualified Vendors receiving more than \$500,000 from all sources is an annual financial audit, which includes Division agreement numbers and payment amounts. Audits must be conducted in accordance with generally accepted auditing standards (GAAS). The Audit Report, Management Letter and Auditor’s Opinion must be submitted to the Division person designated to receive notices within 30 days after completion of the audit.
- 6.3.3.2.1 Audits of non-profit corporations receiving Federal or State monies required pursuant to Federal or State law must be conducted as provided in 31 U.S.C. Section 7501 et seq. and A.R.S. Section 35-181.03 and any other applicable statutes, rules, regulations, and standards.
- 6.3.3.2.2 The annual financial audit must disclose the Division lines of business (including assets, liabilities, equity, revenue, expenses, and cash flows) independent of any other lines of business in which the Qualified Vendor may be engaged. The financial statements must at least separate the Division lines of business in the form of additional supplemental schedules, if they are not separately presented in the financial statements themselves.

6.3.4 Notices.

Notices to the Qualified Vendor required by this agreement shall be made by the State to the person indicated on the Qualified Vendor Application form submitted by the Qualified Vendor unless otherwise stated in the agreement. Notices to the State required by the agreement shall be made by the Qualified Vendor to the Division's Contract Management Section at the following address:

Contract Management Section  
Business Operations – Site Code 791A  
Division of Developmental Disabilities  
Arizona Department of Economic Security  
P.O. Box 6123  
Phoenix, Arizona 85005

An authorized Procurement Officer or authorized Procurement Specialist and an authorized Qualified Vendor representative may change their respective person to whom notice shall be given by written notice and an amendment to the agreement shall not be necessary. All notices shall reference the agreement number.

6.3.5 Advertising and Promotion of Agreement.

The Qualified Vendor shall not advertise or publish information for commercial benefit concerning this agreement without the prior written approval of the Division.

6.3.6 Property of the State.

6.3.6.1 Any materials, including reports, computer programs and other deliverables, created under this agreement are the sole property of the State. The Qualified Vendor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Qualified Vendor shall not use or release these materials without the prior written consent of the State.

6.3.6.2 The Federal and State governments reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal or State government purposes such materials, reports, data or information system, software, documentation and manuals.

6.3.6.3 At the termination of the agreement in whole or in part, the Qualified Vendor shall make available all such relevant materials, reports, data and information to the Division within 30 days following termination of the agreement or such longer period as approved by the Division.

6.3.7 Confidentiality.

The Qualified Vendor shall observe and abide by all applicable State and Federal statutes, rules and regulations regarding the use or disclosure of information including, but not limited to, information concerning applicants for and recipients of agreement services. To the extent permitted by law, the Qualified Vendor shall release information to the Department and the Attorney General's Office as required by the terms of this agreement, by law or upon their request.

6.3.8 Agreement Extension.

This agreement may be extended or renewed for up to five 12-month terms, with all agreements ending June 30, 2009. The Procurement Officer may exercise the Division's option to extend or renew the contract by unilateral agreement amendment; a written amendment signed by both parties shall not be necessary.

6.3.9 Agreement Term.

The term of this agreement shall be the period of time from the agreement begin date to the agreement termination date as awarded or extended. The begin date of the agreement term is the date that the Qualified Vendor may start to provide services under this agreement. The Qualified Vendor will not be paid or reimbursed for agreement services provided prior to the begin date. However, payments or reimbursements shall not be made under this agreement until the effective date of this agreement. The agreement begin date shall be the date the Procurement Specialist signs the Application and the Qualified Vendor Agreement Award.

6.3.10 Cooperation.

The Division may undertake or award other contracts for additional work related to the work performed by the Qualified Vendor, and the Qualified Vendor shall fully cooperate with such other Qualified Vendor and State employees, and carefully fit its own work to such other Qualified Vendor work. The Qualified Vendor shall not commit or permit any act, which will interfere with the performance of work by any other Qualified Vendor or by State employees. The Qualified Vendor shall cooperate as the State deems necessary, with the transfer of work, services, case records and files performed or prepared by the Qualified Vendor to other Qualified Vendor(s).

6.3.11 Technical Assistance.

The Division may, but shall not be obligated to, provide technical assistance to the Qualified Vendor in the administration of agreement services, or relating to the terms and conditions, policies and procedures governing this agreement. Notwithstanding the foregoing, the Qualified Vendor shall not be relieved of full responsibility and accountability for the provision of agreement services in accordance with the terms and conditions set forth herein.

6.3.12 Enrollment; Disenrollment.

Procedures for enrollment of an individual in Qualified Vendor services and termination of enrollment with the Qualified Vendor shall be in accordance with the agreement and all applicable Division and/or AHCCCS rules and policies.

6.3.13 Offshore Performance of Work Prohibited.

Due to security and identity protection concerns, all services under this agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.



## **6.4 Costs and Payments**

### **6.4.1 Payments.**

6.4.1.1 Upon delivery of goods or services, the Qualified Vendor shall submit a complete and accurate invoice to be paid by the State within 30 days of receipt.

6.4.1.2 The Qualified Vendor is paid a specified amount for each unit of service or deliverable as designated in the service specification and published rate or negotiated rate, not to exceed the maximum number of units indicated by the authorization for each agreement service/deliverable.

- 6.4.1.3 The Qualified Vendor shall report agreement expenditures to the Division in the manner prescribed by the “Records,” “Audits,” and “Reporting Requirements” sections of these terms and conditions. Upon receipt of applicable, accurate and complete reports, the Division shall authorize payment or reimbursement in accordance with the method(s) indicated by this agreement.
- 6.4.1.4 If the Qualified Vendor is in any manner in default in the performance of any obligation under this agreement, or if audit exceptions are identified, the Division may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception.
- 6.4.1.5 Under no circumstances shall the Division make payment to the Qualified Vendor that exceeds the authorization. Under no circumstances shall the Division make payment to the Qualified Vendor for services performed prior to or after the term of the agreement without timely extension or renewal of the agreement. Under no circumstances shall the Division make payment to the Qualified Vendor for services delivered prior to licensing if licensing is required. Under no circumstances shall the Division make payment to the Qualified Vendor for services delivered prior to certification. Under no circumstances shall the Division make payment to the Qualified Vendor for services delivered prior to AHCCCS registration.
- 6.4.1.6 Claims by the Qualified Vendor shall be submitted to the Division on the Division’s approved Billing Document. The Qualified Vendor shall be required to make any change in claims format required by the Division, AHCCCS or the Federal government under the electronic submission requirements of the Health Insurance Portability and Accountability Act of 1996.
- 6.4.1.7 The Division is not obligated to pay for services provided without prior authorization. Claims for services delivered shall be initially received by the Division not later than nine months after the last date of service shown on the claim. A resubmitted claim shall not be considered for payment unless it is received by the Division as a clean claim not later than 12 months after the last date of service shown originally on the claim.
- 6.4.1.8 For the purpose of determining the date of receipt of a claim, the date of receipt is the date the Division receives the claim. Only claims received by the Division in accordance with the provisions of this section will be considered for payment.
- 6.4.1.9 Any payment reconciliation shall be submitted in writing, complete with all backup documentation, no later than 60 days from agreement termination date (whether in whole or in part) or renewal date. The Division will determine if additional payment is due to the Qualified Vendor. Failure to submit information within the 60 day timeline will result in forfeiture of any payment determined appropriate.
- 6.4.1.10 The Qualified Vendor shall obtain any necessary authorization from the Division or AHCCCSA for services provided to members and shall comply with encounter reporting and claims submission requirements of the Division and AHCCCS.
- 6.4.1.11 Corrections to claims submitted to the Division in which an underpayment was made due to either billing errors or an error on the part of the Division when paying must be

made within a 12 month period of time following delivery of service. Underpayment billing corrections will not be considered beyond 12 months from service delivery.

6.4.2 Applicable Taxes.

6.4.2.1 *Payment of Taxes by the State*

The State shall pay only the rate and/or amount of taxes identified in the agreement.

6.4.2.2 *State and Local Transaction Privilege Taxes*

The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.

6.4.2.3 *Tax Indemnification*

The Qualified Vendor and all subcontractors shall pay all Federal, State and local taxes applicable to its operation and any persons employed by the Qualified Vendor. The Qualified Vendor shall, and require all subcontractors to, hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

6.4.2.4 *Arizona Substitute W-9 Form*

In order to receive payment under the agreement, the Qualified Vendor shall have a current Arizona Substitute W-9 Form on file with the State of Arizona and shall submit a W-9 upon request by the Division. A W-9 will need to be submitted if there are any changes to the Qualified Vendor's address, name, telephone number or other information. A copy of this W-9 form can be found at the Arizona Department of Administration's General Accounting Office website, <http://www.gao.state.az.us/ach/>.

6.4.3 Availability of Funds.

Funds may not presently be available for performance under this agreement beyond the current fiscal year. No legal liability on the part of the State for any payment may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The State shall make reasonable efforts to secure such funds. The Division may reduce payments or terminate this agreement in whole or in part without further recourse, obligation or penalty in the event that insufficient funds are appropriated or allocated. The Director of the Department shall have the sole and unfettered discretion in determining the availability of funds.

6.4.4 Certification of Cost or Pricing Data.

By signing the Qualified Vendor Application, agreement, agreement amendment or other official form, the Qualified Vendor is certifying that, to the best of the Qualified Vendor's knowledge and belief, any cost or pricing data submitted is accurate, complete and current as of the date submitted or other mutually agreed upon date. Furthermore, the price to the State shall be adjusted to exclude any significant amounts by which the State finds the price was increased because the Qualified Vendor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date of certification. Such adjustment by the State may include overhead, profit or fees. The certifying of cost or pricing data does not apply when agreement rates are set by law or regulation.

6.4.5 Fees and Program Income.

- 6.4.5.1 The Qualified Vendor shall impose no fees or charges of any kind upon consumers for services authorized under this agreement.
- 6.4.5.2 The Qualified Vendor shall not submit a claim, demand, or otherwise collect payment from a member for ALTCS services in excess of the amount paid to the Qualified Vendor by the AHCCCSA or the Division. The Qualified Vendor shall not bill or attempt to collect payment directly or through a collection agency from a person claiming to be ALTCS eligible without first receiving verification from the AHCCCSA that the person was ineligible for ALTCS on the date of service or that services provided were not ALTCS covered services (A.A.C. R9-22-702).
- 6.4.5.3 The Division shall collect Client Share of Cost as described in A.A.C. R9-28-404. The Qualified Vendor may not collect this amount from members.
- 6.4.5.4 Members may be assessed a cost sharing requirement in the form of a co-payment for certain medical services (A.A.C. R9-22-711). Residential Qualified Vendors may need to facilitate payment of this charge from client trust fund accounts.

6.4.6 Levels of Service.

- 6.4.6.1 The Division makes no guarantee to purchase specific quantities of goods or services, or to refer members as may be identified or specified herein. Further, it is understood and agreed that this agreement is for the sole convenience of the Division and that the Division reserves the right to obtain like goods or services from other sources when such need is determined necessary by the Division.
- 6.4.6.2 Any administration within the Department may obtain services under this agreement.
- 6.4.6.3 The Division makes no guarantee to purchase all of the service capacity or to provide any number of referrals.
- 6.4.6.4 Any change in client residential placement requires approval by the Division District Administration. Division District Administration reserves the authority to make any and all determinations regarding client need. Except in an emergency need situation, changes in residential placement require 60 day written prior notification by either the Qualified Vendor or the Division of Developmental Disabilities.

6.4.7 Payment Recoupment.

- The Qualified Vendor must reimburse the Division upon demand or the Division may deduct from future payments the following:
  - 6.4.7.1 Any amounts received by the Qualified Vendor from the Division for agreement services which have been inaccurately reported or are found to be unsubstantiated;
  - 6.4.7.2 Any amounts paid by the Qualified Vendor to a subcontractor if the Qualified Vendor entered into the agreement without advance notice to the Division;
  - 6.4.7.3 Any amount or benefit paid directly or indirectly to an individual or organization not in accordance with the "Substantial Interest Disclosure" section of these terms and conditions;
  - 6.4.7.4 Any amounts paid by the Division for services which duplicate services covered or reimbursed by other specific grants, contracts, or payments;
  - 6.4.7.5 Any amounts paid or reimbursed in excess of the agreement or service reimbursement ceiling;

- 6.4.7.6 Any amounts paid to the Qualified Vendor, which are subsequently determined to be defective pursuant to the "Certification of Cost or Pricing Data" section of these terms and conditions;
- 6.4.7.7 Any payments made for services rendered before the agreement begin date or after the agreement termination date (whether in whole or in part); and
- 6.4.7.8 Any amounts received by the Qualified Vendor from the Division that are identified as a financial audit exception.
- 6.4.8 Reporting Requirements.
- 6.4.8.1 Unless otherwise provided in this agreement, reporting shall adhere to the following schedule: no later than the 15th day following the end of each month during the agreement term the Qualified Vendor shall submit required programmatic and financial reports to the Division in the form set forth in the agreement or as required by the Division. Failure to submit accurate and complete reports by the 15th day following the end of a month may result, at the option of the Division, in retention of payment. Failure to provide such report within 45 days following the end of a month may result, at the option of the Division, in a forfeiture of such payment.
- 6.4.8.2 No later than the 45th day following the termination of this agreement in whole or in part, the Qualified Vendor shall submit to the Division a final program and fiscal report. Failure to submit the final program and fiscal report within the above time period may result, at the option of the Division, in forfeiture of final payment.
- 6.4.8.3 All reports shall reference the agreement number and be submitted to the person designated by the Division.
- 6.4.8.4 Earned income reports for employment-related services shall be submitted to the Division by the Qualified Vendor no later than the 15th day of each month. This also applies to Qualified Vendors who contract with another division to provide employment-related services to the Division's clients.
- 6.4.8.5 The Qualified Vendor shall comply with any other reporting requirements as specified in the agreement or as required by the Division.
- 6.4.9 Substantial Interest Disclosure.
- 6.4.9.1 The Qualified Vendor shall not make any payments, either directly or indirectly, to any person, partnership, corporation, trust, or any other organization which has a substantial interest in the Qualified Vendor's organization or with which the Qualified Vendor (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless the Qualified Vendor has made a full written disclosure of the proposed payments, including amounts, to the Division.
- 6.4.9.2 Leases or rental contracts or purchase of real property which would be covered by 6.4.9.1 of this section shall be in writing and accompanied by an independent commercial appraisal of fair market rental, lease, or purchase value, as appropriate.
- 6.4.9.3 For the purpose of this section, "relative" shall have the same meaning as in A.R.S. §38-502.
- 6.4.10 Coordination of Benefits; Third Party Liability Determination.
- 6.4.10.1 When applicable, the Qualified Vendor shall establish and maintain a third party pay or identification process. The Qualified Vendor shall report to the Division any updates to the

client-specific third party liability information. When applicable, the Qualified Vendor shall seek payment from the third party up to the amount of liability before submitting a claim to the Division. When submitting a claim to the Division, the Qualified Vendor shall also provide written documentation acceptable to the Division as to the amount of the third party payment received or as to the rejection or nonpayment of the claim by the third party. Acceptable written documentation shall normally be construed to mean, at a minimum, an “explanation of benefits” form when the third party is an insurance company whose potential liability on the claim arises out of a contract of insurance. To the extent the Division pays all or a portion of a claim of the Qualified Vendor, the Qualified Vendor hereby assigns to the Division all rights it would otherwise have had from the third party or from any other source.

6.4.10.2 AHCCCS rules apply to the coordination of benefits under this agreement.

## **6.5 Accountability**

### **6.5.1 Professional Standards.**

The Qualified Vendor shall deliver services in a humane and respectful manner and in accordance with any and all applicable professional accreditation standards. Levels of staff qualifications, professionalism, numbers of staff and individuals identified by name must be maintained as presented in the agreement.

### **6.5.2 Personnel.**

The Qualified Vendor’s personnel shall satisfy all qualifications, carry out all duties, work the hours and receive the compensation set forth in this agreement.

### **6.5.3 Fingerprinting.**

6.5.3.1 The provisions of A.R.S. § 46-141 (as may be amended) are hereby incorporated in their entirety as provisions of this agreement. For reference, these provisions include, but are not limited to, the following:

6.5.3.1.1 Personnel who are employed by the Qualified Vendor, whether paid or not, and who are required or allowed to provide services directly to juveniles shall have a valid class one or class two fingerprint clearance card issued pursuant to Title 41, Chapter 12, Article 3.1, or shall apply for a class one or class two fingerprint clearance card within seven business days of employment.

6.5.3.1.2 The Qualified Vendor shall assume the costs of fingerprint checks and may charge these costs to its fingerprinted personnel. The Division may allow all or part of the costs of fingerprint checks to be included as an allowable cost in the agreement.

6.5.3.1.3 Except as provided in A.R.S. § 46-141, this agreement may be cancelled or terminated immediately if a person employed by the Qualified Vendor and who has contact with juveniles certifies pursuant to the provisions of A.R.S. § 46-141 (as may be amended) that the person is awaiting trial or has been convicted of any of the offenses listed therein in this State, or of acts committed in another state that would be offenses in this State, or if the person does not possess or is denied issuance of a valid fingerprint clearance card.

6.5.3.1.4 Personnel who are employed by any Qualified Vendor, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the Department of Economic Security and notarized whether they are awaiting trial on or

have ever been convicted of any of the offenses described in A.R.S. § 46-141 (F) (as may be amended).

- 6.5.3.1.5 Personnel who are employed by any Qualified Vendor, whether paid or not, and who are required or allowed to provide services directly to juveniles shall certify on forms provided by the Department of Economic Security and notarized whether they have ever committed any act of sexual abuse of a child, including sexual exploitation and commercial sexual exploitation, or any act of child abuse.
- 6.5.3.1.6 Federally recognized Indian tribes or military bases may submit and the Department of Economic Security shall accept certifications that state that no personnel who are employed or who will be employed during the agreement term have been convicted of, have admitted committing or are awaiting trial on any offense as described in A.R.S. § 46-141 (F) (as may be amended).
- 6.5.3.2 The Qualified Vendor shall comply with the Division of Developmental Disabilities Criminal Acts/Fingerprinting Standards.
- 6.5.4 Evaluation.  
The Division may evaluate, and the Qualified Vendor shall cooperate in the evaluation of, agreement services. Evaluation may assess the quality and impact of services, either in isolation or in comparison with other similar services, and assess the Qualified Vendor's progress and/or success in achieving the goals, objectives and deliverables set forth in this agreement.
- 6.5.5 Visitation, Inspection and Copying.  
The Qualified Vendor's or any subcontractor's facilities, services, individuals served, books and records pertaining to the agreement shall be available for visitation, inspection and copying by the Division and any other appropriate agent of the State or Federal Government. At the discretion of the Division, visitation, inspection and copying may be at any time during regular business hours, announced or unannounced. If the Division deems it to be an emergency situation, it may at any time visit and inspect the Qualified Vendor's or any subcontractor's facilities, services, and individuals served, as well as inspect and copy their agreement-related books and records.

6.5.6 Supporting Documents and Information.

In addition to any documents, reports or information required by any other section of this agreement, the Qualified Vendor shall furnish the Division with any further documents and information deemed necessary by the Division.

6.5.7 Monitoring.

6.5.7.1 The Division may monitor the Qualified Vendor or any subcontractor and they shall cooperate in the monitoring of services delivered, facilities and records maintained and fiscal practices.

6.5.7.2 The Division will monitor the Qualified Vendor's compliance with the agreement as deemed necessary by the Division. Monitoring may also be conducted, at reasonable times, by parents and consumer representatives, by members of the Developmental Disabilities Advisory Council, and by other recognized, on-going advocacy groups for persons with developmental disabilities. The Qualified Vendor shall adhere to all related policies and procedures the Division deems appropriate to adequately evaluate the quality and impact of services and to establish on-going monitoring of service performance. The Division reserves the right to monitor the actual provision of services for compliance with the DDD Programmatic Standards and to conduct investigations in accordance with the DDD Investigation Standards and to verify staffing levels as authorized by the Division District Administration.

6.5.7.3 If the Division requires the Qualified Vendor to implement a corrective action plan, the Qualified Vendor shall notify all current and prospective consumers that they are operating under a corrective action plan.

6.5.8 Utilization Control/Quality Assurance.

6.5.8.1 The Qualified Vendor shall, at all times during the term of this agreement, maintain an internal quality assurance system in accordance with current applicable AHCCCS rules and policies and Federal rules as specified in the current 42 CFR Part 456, as implemented by AHCCCS and the Division. Qualified Vendor requirements shall include, but are not limited to:

6.5.8.1.1 Completing statistical or program reports as requested by the Division;

6.5.8.1.2 Complying with any recommendations made by the Division's Statewide Quality Management Committee;

6.5.8.1.3 Making records available upon request;

6.5.8.1.4 Allowing persons authorized by the Division access to program areas at any hours of the day or night as deemed appropriate by the Division; and

6.5.8.1.5 Providing program information, upon request, to the Division.

6.5.8.2 The Qualified Vendor shall cooperate with the Division and AHCCCS quality assurance programs and reviews.

6.5.9 Sanctions Against Qualified Vendor.

6.5.9.1 Sanctions imposed against the Division by AHCCCSA for noncompliance with requirements for encounter data reporting, referenced in "Records" of these Terms and Conditions, that would not have been imposed but for the Qualified Vendor's action or lack thereof will be assessed dollar for dollar against the Qualified Vendor.



- 6.5.9.2 Any other sanctions imposed against the Division by AHCCCSA in accordance with applicable AHCCCS rules, policies, and procedures that would not have been imposed but for the Qualified Vendors action or lack thereof will be assessed dollar for dollar against the Qualified Vendor.
- 6.5.9.3 Sanctions imposed against the Division by AHCCCSA for failure of a Qualified Vendor or any subcontractor to submit requested disclosure statements will be assessed dollar for dollar against the Qualified Vendor.
- 6.5.10 Fair Hearings and Consumers' Grievances.
- 6.5.10.1 The Qualified Vendor shall advise all consumers who receive services of their right, at any time and for any reason, to present to the Qualified Vendor and to the Division any grievances arising from the delivery of services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or quality of services. The Division may assert its jurisdiction to hear the grievance or refer the matter to the appropriate authority.
- 6.5.10.2 The Qualified Vendor shall maintain a system, subject to review upon request by the Division, for reviewing and adjudicating grievances by members or subcontractors concerning the actual provision of services and payment for same by or on behalf of the Qualified Vendor. This system shall follow the grievance procedure agreed to by AHCCCSA and the Division in the current AHCCCS/Division intergovernmental agreement and the Division rules and policies.
- 6.5.11 Merger or Acquisition.  
A proposed merger, reorganization, affiliation, or change in ownership of the Qualified Vendor shall require prior approval of the Division.

## **6.6 Agreement Changes**

### **6.6.1 Amendments.**

This agreement is issued under the authority of the Procurement Officer who signed this agreement. The agreement may be modified only through an agreement amendment within the scope of the agreement unless otherwise permitted by the Terms and Conditions. Changes to the agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized State employee or made unilaterally by the Qualified Vendor are violations of the agreement and of applicable law. Such changes, including unauthorized written agreement amendments shall be void and without effect, and the Qualified Vendor shall not be entitled to any claim under this agreement based on those changes. If an amendment requires the signature of the Qualified Vendor, and the Qualified Vendor fails to sign and return the amendment in the form and within the timeframe specified by the Division, the Division may terminate the agreement in whole or in part.

- 6.6.2 Updating Information in Qualified Vendor Application and Directory System.
- 6.6.2.1 The Qualified Vendor shall update in the Qualified Vendor Application and Directory System the general information section of the vendor contract information component, the assurances and submittal form and associated submittals, and the program description section of the detail information component as necessary to ensure that the information is current and accurate. Any change to these items in the Qualified Vendor Application and Directory System must be approved by the Division and shall require an agreement amendment or other agreement action.
- 6.6.2.2 The Qualified Vendor shall update all other information in the Qualified Vendor Application and Directory System as necessary to ensure that the information is current and accurate.
- 6.6.2.3 If the Division finds that the information provided in the original application or as an update to the application is materially inaccurate, and the Qualified Vendor fails to correct such information within the time specified in a notice from the Division, such failure may be cause for termination of the agreement in whole or in part. The Division may remove the information from the directory until a correction is provided or the agreement is terminated.
- 6.6.2.4 The addition of a service to a Qualified Vendor Agreement shall require an agreement amendment.
- 6.6.3 Subcontracts.  
The Qualified Vendor shall not enter into any subcontract for direct services under this agreement without advance notice to the Division. The subcontract shall incorporate by reference this agreement. The Qualified Vendor shall provide copies of subcontracts relating to the provision of agreement services to the Division upon request. The Qualified Vendor shall be legally responsible for agreement performance whether or not subcontractors are used. No subcontract shall operate to terminate or limit the legal responsibility of the Qualified Vendor to assure that all activities carried out by any subcontractor conform to the provisions of this agreement.
- 6.6.4 Assignment and Delegation.  
The Qualified Vendor shall not assign any right nor delegate any duty under this agreement without advance notice to the Division.

**6.7 Risk and Liability**

**6.7.1 General Indemnification.**

To the extent permitted by A.R.S. § 41-621 and A.R.S. § 35-154, the State of Arizona shall be indemnified and held harmless by the Qualified Vendor for its vicarious liability as a result of entering into this agreement. Each party to this agreement is responsible for its own negligence.

**6.7.2 Indemnification - Patent and Copyright.**

To the extent permitted by A.R.S. § 41-621 and § 35-154, the Qualified Vendor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of agreement performance or use by the State of materials furnished or work performed under this agreement. The State shall reasonably notify the Qualified Vendor of any claim for which it may be liable under this section.

**6.7.3 Force Majeure.**

**6.7.3.1** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this agreement if and to the extent that such party's performance of this agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

- 6.7.3.2 Force majeure shall not include the following occurrences:
- 6.7.3.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.7.3.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.7.3.2.3 Inability of either the Qualified Vendor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.7.3.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following business day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by agreement amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this agreement.
- 6.7.3.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.7.4 Third Party Antitrust Violations.  
The Qualified Vendor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Qualified Vendor, toward fulfillment of this agreement.
- 6.7.5 Predecessor and Successor Agreements.  
The execution or termination of this agreement in whole or in part shall not be considered a waiver by the Division of any rights it may have for damages suffered through a breach of this agreement or a prior contract with the Qualified Vendor.
- 6.7.6 Indemnification and Insurance.
- 6.7.6.1 *Indemnification*
- 6.7.6.1.1 Qualified Vendor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Qualified Vendor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Qualified Vendor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court

decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Qualified Vendor from and against any and all claims. It is agreed that Qualified Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this agreement, the Qualified Vendor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Qualified Vendor for the State of Arizona.

6.7.6.1.2 This indemnity shall not apply if the Qualified Vendor or subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.7.6.2 *Insurance Requirements*

6.7.6.2.1 Qualified Vendor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this agreement, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Qualified Vendor, his agents, representatives, employees or subcontractors.

6.7.6.2.2 The insurance requirements herein are minimum requirements for this agreement and in no way limit the indemnity covenants contained in this agreement. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Qualified Vendor from liabilities that might arise out of the performance of the work under this agreement by the Qualified Vendor, its agents, representatives, employees or subcontractors, and Qualified Vendor is free to purchase additional insurance.

6.7.6.2.3 Minimum Scope and Limits of Insurance: Qualified Vendor shall provide coverage with limits of liability not less than those stated below:

6.7.6.2.3.1 Commercial Scope and Limits of Insurance- Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include coverage for sexual abuse and molestation.

- b. The policy shall be endorsed to include the following additional insured language:  
*“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor”.*
- c. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Qualified Vendor.

#### 6.7.6.2.3.2 Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this agreement.

Combined Single Limit (CSL)

\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language:  
*“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Qualified Vendor, involving automobiles owned, leased, hired or borrowed by the Qualified Vendor”.*

#### 6.7.6.2.3.3 Worker’s Compensation and Employers’ Liability

Workers’ Compensation

Statutory

Employers’ Liability

Each Accident \$ 500,000

Disease – Each Employee \$ 500,000

Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Qualified Vendor.
- b. This requirement shall not apply to: Separately, EACH Qualified Vendor or subcontractor exempt under A.R.S. 23-901, AND when such Qualified Vendor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

#### 6.7.6.2.3.4 Professional Liability (Errors and Omissions Liability)

Each Claim \$1,000,000

Annual Aggregate \$2,000,000

- a. In the event that the professional liability insurance required by this agreement is written on a claims-made basis, Qualified Vendor warrants that any retroactive date under the policy shall precede the effective date of this agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this agreement is completed.

- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Qualified Vendor.
  - c. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this agreement.
- 6.7.6.2.4 Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:
  - 6.7.6.2.4.1 The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Qualified Vendor, even if those limits of liability are in excess of those required by this agreement.
  - 6.7.6.2.4.2 The Qualified Vendor's insurance coverage shall be primary insurance with respect to all other available sources.
  - 6.7.6.2.4.3 Coverage provided by the Qualified Vendor shall not be limited to the liability assumed under the indemnification provisions of this agreement.
- 6.7.6.2.5 Notice of Cancellation: Each insurance policy required by the insurance provisions of this agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the Division's Contracts Management Section and shall be sent by certified mail, return receipt requested.
- 6.7.6.2.6 Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Qualified Vendor from potential insurer insolvency.
- 6.7.6.2.7 Verification of Coverage:
  - 6.7.6.2.7.1 Qualified Vendor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
  - 6.7.6.2.7.2 All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this agreement must be in effect at or prior to commencement of work under this agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this agreement, or to provide evidence of renewal, is a material breach of agreement.

- 6.7.6.2.7.3 All certificates required by this agreement shall be sent directly to the Division's Contracts Management Section. The State of Arizona project/agreement number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**
- 6.7.6.2.8 Subcontractors: Qualified Vendors' certificate(s) shall include all subcontractors as insureds under its policies **or** Qualified Vendor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 6.7.6.2.9 Approval: Any modification or variation from the *insurance requirements* in this agreement shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal agreement amendment, but may be made by administrative action.
- 6.7.6.2.10 Exceptions: In the event the Qualified Vendor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the Qualified Vendor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.



## **6.8 Warranties**

### **6.8.1 Year 2000.**

6.8.1.1 Notwithstanding any other warranty or disclaimer of warranty in this agreement, the Qualified Vendor warrants that all products delivered and all services rendered under this agreement shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this agreement. In addition, the defense of force majeure shall not apply to the Qualified Vendor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

6.8.1.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this agreement, the Qualified Vendor warrants that each hardware, software, and firmware product delivered under this agreement shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the 20<sup>th</sup> and 21<sup>st</sup> centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this agreement properly exchanges date-time data with it. If this agreement requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this agreement. In addition, the defense of force majeure shall not apply to the failure of the Qualified Vendor to perform any specification requirements as a result of any date-related data Year 2000 issues.

### **6.8.2 Compliance With Applicable Laws.**

6.8.2.1 The materials and services supplied under this agreement shall comply with all applicable Federal, State and local laws, and the Qualified Vendor shall maintain all applicable license and permit requirements.

6.8.2.2 In accordance with A.R.S. § 36-557 (Purchase of community developmental disabilities services; application; agreements; limitation), as applicable, all consumers

- who receive agreement services shall have all of the same specified rights as they would have if enrolled in a service program operated directly by the State.
- 6.8.2.3 Nothing in this agreement shall be construed as a waiver of an Indian tribe's sovereign immunity; nothing shall be construed as an Indian tribe's consent to be sued, or as consent by an Indian tribe to jurisdiction of any State Court.
- 6.8.2.4 The Qualified Vendor shall comply with the requirements related to reporting to a peace officer or child protective services incidents of crimes against children as specified in A.R.S. §13-3620.
- 6.8.2.5 The Qualified Vendor shall comply with Public Law 101-121, Section 319 (21 U.S.C. Section 1352) and 29 C.F.R. Part 93 which prohibit the use of Federal funds for lobbying and which state, in part: Except with the express authorization of Congress, the Qualified Vendor, its employees or agents, shall not utilize any Federal funds under the terms of this agreement to solicit or influence, or to attempt to solicit or influence, directly or indirectly, any member of Congress regarding pending or prospective legislation. Indian tribes, tribal organizations and any other Indian organizations are exempt from these lobbying restrictions with respect to expenditures that are specifically permitted by other Federal law.
- 6.8.2.6 Pursuant to A.R.S. Section 36-557.F.3, agreements for the purchase of residential care services shall provide for mandatory investigation by the Division in response to complaints within ten business days after receipt of a complaint; in those instances, which pose a danger to the health and safety of a Division member, the Division shall conduct the investigation immediately.
- 6.8.2.7 The Qualified Vendor and any subcontractor shall comply with all applicable Federal laws, rules, regulations and policies, including Title XIX of the Social Security Act, the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), Title 42 of the Code of Federal Regulations, and Title 45 Code of Federal Regulations, Parts 74 and 96. If the Qualified Vendor receives Title XX funds, the Qualified Vendor shall comply with The Arizona Title XX Social Services Plan and Section 2352, Title XX Block Grants, of the Omnibus Budget Reconciliation Act of 1981.
- 6.8.2.8 The Qualified Vendor and any subcontractor shall comply with all applicable licensure, certification, and registration standards established by the Department, the Division, and AHCCCS. The Qualified Vendor and any subcontractor shall comply with all applicable Arizona law and applicable Department, Division, or AHCCCS administrative rules, policies, procedures, service standards, and guidelines, including, but not limited to:
- 6.8.2.8.1 Hiring of ex-offenders;
- 6.8.2.8.2 Fingerprinting of Qualified Vendor's and any subcontractor's staff;
- 6.8.2.8.3 Completing of Fire Risk Profile requirements;
- 6.8.2.8.4 Reporting of unusual incidents involving children and/or adults;
- 6.8.2.8.5 Implementing program audit implementation plans;
- 6.8.2.8.6 Participating as a member of the Individual Service Plan (ISP) team;
- 6.8.2.8.7 Complying with all policies, procedures and instructions regarding ISPs;
- 6.8.2.8.8 Submitting to the Division's case managers copies of the ISP strategies and other

- required documentation;
- 6.8.2.8.9 Providing copies of member/client records, including evaluations and progress reports; and
- 6.8.2.8.10 Ensuring that all movement of Division members, except in emergency need situations, is coordinated through the ISP team. If a member is receiving Title XIX funded services, no member movement shall take place unless it is part of the member's ISP.
- 6.8.2.9 The Qualified Vendor and any subcontractor shall comply with the Occupational Safety and Health Administration (OSHA) regulations regarding bloodborne pathogens, 29 CFR 1910.1030.
- 6.8.2.10 The terms of this agreement shall be subject to the terms of the intergovernmental agreement between the Division and AHCCCS for the provision of services under ALTCS.
- 6.8.2.11 The Qualified Vendor shall comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191) and all applicable implementing Federal regulations. The Qualified Vendor shall notify the Division no later than 120 days prior to any required compliance date if the Qualified Vendor is unwilling to or anticipates that it will be unable to comply with any of the requirements of this section. Receipt by the Division of a notice of anticipated inability or unwillingness to comply as required by this section constitutes grounds for the termination of this agreement.
- 6.8.2.12 Any changes to Federal laws, regulations, or policies, to Arizona law, to Department, Division, or AHCCCS administrative rules, policies, procedures, service standards, or guidelines, or to the intergovernmental agreement between the Division and AHCCCS during the term of this agreement shall apply to the agreement. If the Qualified Vendor or the Division reasonably believes that the change would cause a significant increase or decrease in the cost of providing services under the agreement, then such party may request that the rate be adjusted; however, such request must be submitted to the other party in writing within 30 days of the change. The parties must seek to adjust the rate in good faith. Failure to notify the other party within 30 days waives the right of the party to seek an adjustment. Implementation of any and all rate adjustments is contingent upon availability and authorization to expend the necessary State/Federal funds.
- 6.8.3 Advance Directives.  
As appropriate, the Qualified Vendor shall comply with Federal and State law on advance directives for adult individuals. Requirements include:
- 6.8.3.1 Maintaining written policies for adult individuals receiving care through the Qualified Vendor regarding the individual's right to make decisions about medical care, including the right to accept or refuse medical care and the right to execute an advance directive. If the Qualified Vendor has a conscientious objection to carrying out an advance directive, it must be explained in policies. (A Qualified Vendor is not prohibited from making objection when made pursuant to A.R.S. 36-3205.C.1.)
- 6.8.3.2 Provide written information to adult individuals regarding an individual's right under

- State law to make decisions regarding medical care and the Qualified Vendor's written policies concerning advance directives (including any conscientious objections).
- 6.8.3.3 Document in the individual's medical record as to whether the adult individual has been provided the information and whether an advance directive has been executed.
- 6.8.3.4 Shall not discriminate against an individual because of his or her decision to execute or not execute an advance directive, and not making it a condition for the provision of care.
- 6.8.3.5 Provide education for staff on issues concerning advance directives including notification of direct care providers of services of any advanced directives executed by members to whom they are assigned to provide care.
- 6.8.4 Group Homes for Juveniles.  
If the Qualified Vendor provides contracted services in a group home as defined in A.R.S. 36-1301, the following shall apply:
- 6.8.4.1 The Qualified Vendor shall agree to the following:
- 6.8.4.1.1 The group home shall provide a safe, clean and humane environment for the residents.
- 6.8.4.1.2 The group home is responsible for the supervision of the residents while in the group home environment or while residents are engaged in any off-site activities organized or sponsored by and under the direct supervision and control of the group home or affiliated with the group home.
- 6.8.4.2 All group homes shall be licensed by either the Department of Health Services or the Department of Economic Security.
- 6.8.4.3 The award of an agreement is not a guarantee that children will be placed at the group home.
- 6.8.4.4 In addition to any other remedies available to the Division, the following agreement remedies shall apply:
- 6.8.4.4.1 The Division may remove residents from the group home or may suspend new placements to the group home until the contracting violation is corrected.
- 6.8.4.4.2 The Division may cancel the agreement.
- 6.8.4.5 Within ten business days after the Division receives a complaint relating to a group home the Division shall notify the Qualified Vendor and either initiate an investigation or refer the investigation to the licensing authority.  
If any complaint concerns an immediate threat to the health and safety of a child, the Division will immediately refer the complaint to the licensing authority.
- 6.8.4.6 If the Division determines that a violation has occurred, it shall:
- 6.8.4.6.1 Notify all other contracting authorities of the violation.
- 6.8.4.6.2 Coordinate a corrective action plan consistent with the severity of the violation.
- 6.8.4.6.3 Require the corrective action plan to be implemented within 90 days.
- 6.8.4.7 If a licensing deficiency is not corrected in a timely manner to the satisfaction of the licensing authority, the Division may cancel the agreement immediately on notice to the Qualified Vendor and may remove the residents.

6.8.5 Service Process for Wards of the State.

In the event that an individual calls or appears at a physical location of the Qualified Vendor seeking to service process (summons and complaint, petition or subpoena, etc.) upon a minor who is in the physical custody of the Qualified Vendor but is a ward of the State of Arizona, Department of Economic Security, Qualified Vendor agrees not to accept service of that/those document(s) and to refer the individual to the child's Support Coordinator. If, by error, Qualified Vendor or its agent accepts any service of process, a copy shall immediately be forwarded to the child's Support Coordinator and shall also contain a transmittal memorandum that indicates the date the legal document was received, the person receiving it and the place of service, as well as the child to whom it refers.

6.8.6 Gratuities.

The Qualified Vendor or its representative shall not offer or make employment or a gratuity to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the agreement, an amendment to the agreement, or favorable treatment concerning the agreement, including the making of any determination or decision about agreement performance.

6.8.7 Suspension or Debarment.

6.8.7.1 The Qualified Vendor shall not be debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity.

6.8.7.2 The Qualified Vendor shall not employ, consult, subcontract or otherwise reimburse for services any person or entity that is debarred, suspended or otherwise excluded from public procurement activity. This prohibition extends to any person or entity that employs, consults, subcontracts with or otherwise reimburses for services any person or entity substantially involved in the management of another entity that is debarred, suspended or otherwise excluded from public procurement activity.

6.8.7.2 The Qualified Vendor shall not retain as a director, officer, partner or owner of five percent or more of the Qualified Vendor, any person, or affiliate of such a person, who is debarred, suspended or otherwise excluded from public procurement activity.

6.8.8 Survival of Rights and Obligations after Agreement Expiration or Termination.

All representations and warranties made by the Qualified Vendor under this agreement shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

**6.9 State's Contractual Remedies**

6.9.1 Right to Assurance.

If the State in good faith has reason to believe that the Qualified Vendor does not intend to, or is unable to perform or continue performing under this agreement, the Division may demand in writing that the Qualified Vendor give a written assurance of intent to perform. Failure by the Qualified Vendor to provide written assurance within the number of days

specified in the demand may, at the State's option, be the basis for terminating the agreement in whole or in part.

6.9.2 Stop Work Order.

6.9.2.1 The State may, at any time, by written order to the Qualified Vendor, require the Qualified Vendor to stop all or any part of the work called for by this agreement for a period of 90 days after the order is delivered to the Qualified Vendor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Qualified Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

6.9.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Qualified Vendor shall resume work. The Division shall make an equitable adjustment in the authorization schedule or agreement price, or both, and the agreement shall be amended in writing accordingly.

6.9.3 Non-exclusive Remedies.

The rights and the remedies of the State under this agreement are not exclusive.

6.9.4 Nonconforming Tender.

Reports or other documents supplied under this agreement shall fully comply with the agreement. The delivery of reports or other documents or a portion of the reports or other documents in an installment that do not fully comply constitutes a breach of agreement. On delivery of nonconforming reports or other documents, the State may terminate the agreement for default as defined in Section 6.10.6 Termination for Default, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

6.9.5 Right of Offset.

The State shall be entitled to offset against any sums due the Qualified Vendor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Qualified Vendor's non-conforming performance or failure to perform the agreement, including expenses, costs and damages.

6.9.6 Provisions for Default.

In addition to any other remedies available to the Division, if the Qualified Vendor fails to comply with a term of the agreement, the Division may take one or more of the following actions:

6.9.6.1 Withhold payment in whole or in part;

6.9.6.2 Suspend enrollment; or

6.9.6.3 Suspend the agreement in whole or in part, remove the Qualified Vendor from the Qualified Vendor List, and enroll individuals with another Qualified Vendor.

## **6.10 Agreement Termination**

### **6.10.1 Cancellation for Conflict of Interest.**

Pursuant to A.R.S. § 38-511, the State may cancel this agreement within three years after agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the State is or becomes at any time while the agreement or an extension of the agreement is in effect an employee of or a consultant to any other party to this agreement with respect to the subject matter of the agreement. The cancellation shall be effective when the Qualified Vendor receives written notice of the cancellation unless the notice specifies a later time. If the Qualified Vendor is a political subdivision of the State, it may also cancel this agreement as provided in A.R.S. § 38-511.

### **6.10.2 Gratuities.**

The State may, by written notice, terminate this agreement, in whole or in part, if the State determines that employment or a gratuity was offered or made by the Qualified Vendor or a representative of the Qualified Vendor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the agreement, an amendment to the agreement, or favorable treatment concerning the agreement, including the making of any determination or decision about agreement performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Qualified Vendor.

### **6.10.3 Suspension or Debarment.**

The State may, by written notice to the Qualified Vendor, immediately terminate this agreement in whole or in part if the State determines that the Qualified Vendor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. This prohibition extends to any entity, which employs, consults, subcontracts with or otherwise reimburses for services any person substantially involved in the management of another entity, which is debarred, suspended, or otherwise excluded from Federal procurement activity.

### **6.10.4 Termination for Convenience.**

The State reserves the right to terminate the agreement, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Qualified Vendor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this section, all documents, data and reports prepared by the Qualified Vendor under the agreement shall become the property of and be delivered to the State. The Qualified Vendor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

6.10.5 Termination upon Request of the Qualified Vendor.

The State shall terminate the agreement in whole or in part upon request of the Qualified Vendor. The Qualified Vendor shall provide at least 60 days written notice to the Division setting forth the reasons for requesting termination. The Division shall provide written notice of acceptance of such termination and the termination date. Upon termination, all goods, materials, documents, data and reports prepared by the Qualified Vendor under the agreement shall become the property of and be delivered to the State on demand. The State may, upon termination, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this agreement. The Qualified Vendor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Qualified Vendor.

6.10.6 Termination for Default.

6.10.6.1 The State reserves the right to terminate the agreement in whole or in part when a Qualified Vendor no longer meets the criteria defined in the Request for Qualified Vendor Applications; for non-compliance with the agreement requirements; or for failure to maintain a valid license, AHCCCS registration or Division certification, as appropriate. The Division shall provide written notice of the termination and the reasons for it to the Qualified Vendor.

6.10.6.2 Upon termination under this section, all goods, materials, documents, data and reports prepared by the Qualified Vendor under the agreement shall become the property of and be delivered to the State on demand.

6.10.6.3 The State may, upon termination of this agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this agreement. The Qualified Vendor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Qualified Vendor.

6.10.6.4 This agreement may immediately be terminated if the Division determines that the health or welfare or safety of consumers is endangered.

6.10.7 Continuation of Performance Through Termination.

The Qualified Vendor shall continue to perform, in accordance with the requirements of the agreement, up to or beyond the date of termination, in whole or in part, as directed in the termination notice.

6.10.8 Termination for Any Reason.

6.10.8.1 In the event of termination or suspension of the agreement by the Division, in whole or in part, such termination or suspension shall not affect the obligation of the Qualified Vendor to indemnify the Division, the Department and the State for any claim by any other party against the Division, the Department and/or the State arising from the Qualified Vendor's performance of this agreement and for which the Qualified Vendor would otherwise be liable under this agreement. To the extent such indemnification is excluded by A.R.S. §41-621 et seq. or an obligation is unauthorized under A.R.S. §35-154, the provisions of this section shall not apply.



- 6.10.8.2 In the event of early termination, any funds advanced to the Qualified Vendor shall be returned to the Division within ten days after the date of termination or upon receipt of notice of termination of the agreement, whichever is earlier.
- 6.10.8.3 In the event the agreement is terminated, in whole or in part, with or without cause, or expires, the Qualified Vendor shall assist the Division in the transition of members to other Qualified Vendors in accordance with applicable rules and policies. Such assistance shall include but shall not be limited to:
  - 6.10.8.3.1 Forwarding program and other records as may be necessary to assure the smoothest possible transition and continuity of services. The cost of reproducing and forwarding such records shall be borne by the Qualified Vendors.
  - 6.10.8.3.2 Notifying of subcontractors and members.
  - 6.10.8.3.3 Facilitating and scheduling medically necessary appointments for care and services.
  - 6.10.8.3.4 Providing all reports set forth in this agreement.
  - 6.10.8.3.5 Making provisions for continuing all management/administrative services until the transition of members is completed and all other requirements of this agreement are satisfied.
  - 6.10.8.3.6 If required by the Division, extending performance until suitable arrangements have been made by the Division for a replacement Qualified Vendor.
  - 6.10.8.3.7 If required by the Division, at the Qualified Vendor's own expense, assisting in the training of personnel.
  - 6.10.8.3.8 Paying all outstanding obligations for care rendered to members.
  - 6.10.8.3.9 Providing the following financial reports to the Division until the Division is satisfied that the Qualified Vendor has paid all such obligations: (a) a monthly claims aging report by provider/creditor including Incurred But Not Reported (IBNR) amounts; (b) a monthly summary of cash disbursements; and (c) copies of all bank statements received by the Qualified Vendor in the preceding month for Qualified Vendor's bank accounts. All reports in this section shall be due on the fifth day of each succeeding month for the prior month.
- 6.10.9 In the event the agreement is terminated in part, the Qualified Vendor shall continue the performance of the agreement to the extent not terminated.

## **6.11 Agreement Claims**

All agreement claims or controversies under this agreement shall be resolved according to A.A.C. R6-6-2116.